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OGC 70-1773

20 October 1970

MEMORANDUM FOR: Chairman, Travel Policy Committee

SUBJECT: Use of American Airlines for Federal Travel

1. The Committee has requested the legal basis for the requirement for use of American airlines for travel by Government employees and whether the Agency need be bound by general Government regulation requiring use of airplanes registered under U. S. law.

2. Section 901 of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(a) provides as follows:

Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

It would appear that in not mentioning aircraft Congress did not legislate against Government use of foreign airlines. However, Government regulation has long recognized extension of this requirement to airplanes as well as to ships (See para. 3, Standardized

Government Travel Regulations). Moreover, Congress has issued a Concurrent Resolution favoring use of U. S. airlines. Concurrent Resolution 53 of 1 October 1962, 76 Stat. 1428 states:

**TRAVEL ON U.S. FLAG AIR CARRIERS BY FEDERAL EMPLOYEES**

Whereas Congress has by statute directed the preferential use of United States flag merchant vessels in connection with all travel by Government employees; and

Whereas as a matter of general policy the executive branch of the Government has for many years urged the preferential use of United States flag air carriers by governmental employees and United States governmental departments and agencies have adopted regulations accordingly; and

Whereas the development and preservation of a sound and strong United States civil air fleet is most vital to the national welfare and interest and its strength and prestige constantly maintained and preserved: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Senate and the House of Representatives that when travel on official business is to be performed on civil aircraft by legislative and Government officers and employees, that said travel be performed by them on United States flag air carriers, except where travel on other aircraft (a) is essential to the official business concerned, or (b) is necessary to avoid unreasonable delay, expense, or inconvenience.

Agreed to October 1, 1962.

3. It is our opinion that this Resolution must be construed to make the Merchant Marine Act of 1936 as it pertains to use of American vessels applicable to all air travel of U. S. Government employees.

4. A Concurrent Resolution is not normally legislative in character, but it is used to express a fact, principle, or opinion of both Houses of Congress affecting their operations. This Resolution also affects Government employees generally and may be considered

the strongest of policy directions short of specific legislation on the subject. The only exception to the rule allowed by the Comptroller General is in the use of foreign aircraft where the available American flag registry carriers will not accept United States-owned foreign currency of an excess or near-excess country. (46 Comp. Gen. 243)



Assistant General Counsel

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